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to do so, his transactions are voidable, and may be repudiated by the principal even though the principal is not injured by his ignorance of the facts.

[Ed. Note.—For other cases, see *Brokers*, Cent. Dig. §§ 29, 30; Dec. Dig. § 36.\* 2 Va.-W. Va. Enc. Dig. 632.]

**11. Brokers (§ 65\*)—Actions for Commissions—Instructions.**—In a broker's action for commissions, it was error to refuse an instruction that, if the broker had contracted with defendant, whereby it was to receive a commission of 10 per cent., and while such contract was in existence it secured a purchaser for \$13,000, and thereupon notified defendant that it had a purchaser, and asked if he would take \$8,500, and upon his refusal asked if he would take \$10,500 net, and if, in ignorance that the purchaser had already agreed to pay \$13,000, defendant agreed to take such sum, and thereby the broker increased its compensation from \$1,300 to \$2,500, the broker had not dealt fairly with defendant, and could not recover where there was evidence of the facts hypothesized, and that one of the broker's officers led defendant to believe that the broker was getting only \$11,000 for the property, and that defendant would not have agreed to sell for \$10,500 net had he known that the purchaser had agreed to pay \$13,000.

[Ed. Note.—For other cases, see *Brokers*, Cent. Dig. §§ 48-50; Dec. Dig. § 65.\* 2 Va.-W. Va. Enc. Dig. 638.]

Error to Law and Equity Court of City of Richmond.

Action by the Middle Atlantic Immigration Company, Incorporated, against B. Pollard Cardozo. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

*Haw & Haw*, of Richmond, for plaintiff in error.

*Meredith & Cocke* and *Gregory & Boulware*, all of Richmond, for defendant in error.

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RICHARDSON CONST. CO. v. WHITING LUMBER CO.

June 11, 1914.

[82 S. E. 87.]

**1. Set-Off and Counterclaim (§ 28\*)—Subject-Matter—Damages for Breach of Vendor's Contract.**—In an action for balance due for lumber furnished, defendant could set off a claim for the difference between the contract price and the market price of a bill of lumber which plaintiff failed to deliver, since such amount was susceptible of

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

certain and definite ascertainment not resting upon mere opinion, but upon existing facts furnishing a basis for calculation.

[Ed. Note.—For other cases, see Set-Off and Counterclaim, Cent. Dig. §§ 47, 48; Dec. Dig. § 28.\* 12 Va.-W. Va. Enc. Dig. 255.]

**2. Sales (§ 418\*)—Remedies of Purchaser—Action for Breach of Contract—Damages.**—Where a vendor fails or refuses to deliver personal property, the measure of damages is usually the difference between the contract price and the market price, at the time and place, with interest.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1174-1201; Dec. Dig. § 418.\* 12 Va.-W. Va. Enc. Dig. 29.]

**3. Sales (§ 418\*) — Remedies of Purchaser — Damages.**—Where a vendor fails to deliver personal property pursuant to his contract, the vendee may, for his own protection, buy the goods in the open market and charge the difference in price to the vendor's account, for which indebitatus assumpsit will lie.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1174-1201; Dec. Dig. § 418.\* 12 Va.-W. Va. Enc. Dig. 28.]

Error to Circuit Court of City of Norfolk.

Action by the Whiting Lumber Company against the Richardson Construction Company. Judgment for plaintiff, and defendant brings error. Reversed.

*Jeffries, Wolcott, Wolcott & Lankford*, of Norfolk, for plaintiff in error.

*R. Randolph Hicks*, of Norfolk, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.